IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4149 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
MARCH 12, 2007.

Heard Shri Dangre, learned counsel for the petitioner and Shri Dhawas, learned counsel for respondents No. 1, 4 & 5.

As per orders of this Court dated 14.12.2006, writ petition is to be disposed of finally at the stage of admission itself.

Shri Dangre, learned counsel states that suit filed by Respondent No.1 is for grant of 1/5th share i.e. in-service benefit of deceased Kishor, who happened to be brother of the petitioner and also Respondent No.1. Respondent Nos. 4, 5 & 6 before this Court are also his brothers and sisters. He states that as hearing of temporary injunction application was going on, written statement could not be filed. He states that the provisions of Order 8, Rule 1 of Civil Procedure Code are not applicable because suit was filed before

1.7.2002.

Shri Dhawas, learned counsel for respondent No.1 – original plaintiff contends that there is absolutely no justification for not filing written statement immediately and pendency of application for grant of temporary injunction cannot be a valid excuse.

He was supported in his arguments by Shri Bari, learned counsel for respondent No.6 and Mrs. Shinde, learned counsel who appears for Respondents No.2 & 3.

Considering the facts and nature of controversy, I find it proper to give one opportunity to present petitioner to file written statement on record. However, the original plaintiff i.e. Respondent No.1 cannot be allowed to suffer for that. Hence, the impugned order needs to be quashed and set aside as it cannot be said that the petitioner is personally responsible for not filing written statement on record within time. The petitioner is bound to have acted as per advise which she has received in the matter.

The impugned order dated 29.11.2005 is, therefore, quashed and set aside. The written statement filed on record by

the petitioner is directed to be taken on record, however, subject to payment of cost of Rs.3,000/- (Rs. Three thousand only) by present petitioner to Respondent No.1 within a period of two weeks before the lower Court. If the costs are so paid, written statement be taken on record. The proceedings before the lower Court in Regular Civil Suit No.666 of 2002 are expedited and the lower Court shall decide the same as early as possible and in any case within a period of eight months from the date of communication of this order to it.

Writ Petition is disposed of. Rule accordingly. No order as to costs.

JUDGE

*GS.